



April 28, 2005

Editorial:

[No more stalling, Senate should vote Judge Boyle's nomination up or down, *Charlotte Observer*, 4/27/05](#)

Noteworthy:

"[T]here shouldn't be compromise, because on this particular issue, what happened the last two years is totally untraditional of the Senate for the first 214 years [of its existence]. What we want to do from here into the future is exactly the way it was done between 1789 and 2003."

-Senator Grassley MSNBC's "Hardball," 4/27/05

"We called this the constitutional option because we're doing the same thing that Senator Byrd did on two or three occasions. At one time, he rewrote the rules this way, the way we're intending to rewrite them because there was opposition to even going to a motion for seed on a nomination. So he eliminated the motion to proceed. So we're just doing it the same way that's been done. That's why we call at this time constitutional option."

-Senator Grassley MSNBC's "Hardball," 4/27/05

"They said the spin the bottle Russian roulette approach is not, I think, respectful of the institution and what we're expected to do."

-Senator Frist, Fox News' "Special Report," 4/27/05

"The cause of the controversy lies with the previous leader of the Democrats, who put forward a strategy, a plan, a scheme to fundamentally shift the power away from the President of the United States to 41 members of the United States Senate to determine what nominees will be confirmed here on the floor of the Senate."

"Had we wanted to filibuster Richard Paez, we would have been successful. He would not have received the 60 votes. He would not be a judge on the circuit today."

"I know for a fact that Senator Frist has repeatedly offered compromises. And I know also that the Majority Leader is very much open to negotiation, to compromise to return to the precedent of the Senate."

-Senator Santorum, Senate Floor, 4/27/05

Myth

“The filibuster dates from the days of George Washington.”

Senator Reid, Senate Floor, April 27, 2005

Fact

The filibuster certainly does NOT date back to the days of George Washington. The filibuster is not a part of the Constitution. Furthermore, for the first twenty years of its existence, the Senate chose to conduct its proceedings like the House without the ability to filibuster. Specifically, until the nineteenth century (1806), Senate Rules allowed a simple majority to bring a matter to a vote. When the possibility of a filibuster did arise, it did so by the default of Senate Rules: the Senate decided that it did not need to renew the Senate Rule (the previous question motion) that allowed the majority to bring a matter to a vote, because only once in twenty years had there been the need to invoke it! And it was not until the last Congress—two centuries after the passing of our first President--did Senate Democrats change tradition by filibustering judicial nominees with majority support.

Quotable

“Washington said, ‘Even so we pour *legislation* into the Senatorial saucer to cool it.’”

Senator Biden, Senate Floor, April 27, 2005, noting that the Founding Fathers established the Senate so as to insulate it from the political passions of the moment in regards to legislation (as opposed to nominations).

EDITORIAL: No more stalling

Senate should vote Judge Boyle's nomination up or down
CHARLOTTE OBSERVER

April 28, 2005

U.S. Chief District Judge Terrence Boyle of Edenton deserves a vote in the U.S. Senate on his nomination for the 4th U.S. Circuit Court of Appeals in Richmond. Judge Boyle may not be the ideal judicial nominee, but he is ferociously independent and a workhorse jurist who often knows more about a case than the lawyers who argue in his courtroom. We believe these qualities have earned him the right to a Senate vote.

It's not clear whether Judge Boyle will get his day in that court. A federal judge for 21 years, he has been nominated for the 4th Circuit three times -- first by former President George H.W. Bush and twice more by the current President Bush. In each case, his nomination has run afoul of those who do not agree with his rulings, and perhaps more telling, with those who do not agree

with his strongest backers. Judge Boyle worked briefly for former U.S. Sen. Jesse Helms, R-N.C., a conservative lightning rod who nominated him for his Eastern District judgeship.

Judge Boyle also has encountered opposition from Democrats who recall Sen. Helms' blocking of nominees they favored, including U.S. District Judge James Beaty of Winston-Salem. This political tit-for-tat serves no one's interests. It has kept North Carolina judges off the 4th Circuit Court and blocked district court appointments, too.

Not even Judge Boyle's strongest defenders argue he has a perfect judicial record. Many of his decisions have been reversed on appeal -- partly a consequence of his having written thousands of opinions since he became a judge in 1984. Critics say he is insensitive to the needs of the disabled and has ruled incorrectly in civil rights and employment discrimination cases. They cite the Supreme Court's 1999 and 2001 reversals of his participation in a three-judge panel's decisions striking down the North Carolina's 12th Congressional District as examples of his judicial error.

But Judge Boyle should also be judged on his decisions in other important cases. In a case involving a copy of the Bill of Rights taken from the state Capitol at the end of the Civil War, Judge Boyle ruled that it belongs to the state of North Carolina and not to speculators who purchased it in hopes of making a ton.

He also has issued important environmental rulings, upholding the reintroduction of the red wolf in Eastern North Carolina, sustaining important laws protecting wetlands, and halting the Navy's fatally flawed and poorly documented plan to put a jet landing field next to the nation's most important migratory waterfowl refuge.

Judge Boyle's service is long and his record is mixed, but he has sat on the appellate bench on individual cases and has proved to be a fair-minded judge who works hard to understand the issues. It was wrong for Republicans to hold nominations hostage and it's wrong for the Democrats, too. Judge Boyle deserves a Senate vote, up or down, on his nomination.

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